IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

HAROLD E. SMITH PLAINTIFF

VS. NO. 4:94CV23-D-A

EDDIE LUCAS, ET AL. DEFENDANTS

MEMORANDUM OPINION

Upon consideration of the file and record in this action, the court is of the opinion that the Magistrate Judge's Report and Recommendation dated August 1, 1995, should be approved and adopted. Having conducted an independent, de novo review of the record, including the transcript of the hearing, petitioner's objections and applicable case law, the court is of the opinion that the Magistrate Judge correctly assessed both the facts and the law in reaching her conclusion. The Magistrate Judge based her report and recommendation on the fact that the plaintiff has no constitutional right to participate in a rehabilitation or educational program. The Magistrate Judge further held that since Mississippi law provides no right to such participation, "the provision and administration of such prison programs are at the discretion of prison officials." In addition, the Magistrate Judge correctly analyzed plaintiff's claim under an equal protection theory and found it frivolous. In that the plaintiff only objected to the Magistrate Judge's report and recommendation on the ground that Mississippi law mandates implementation of rehabilitation programs in its state correctional facilities, the court addresses the unchallenged grounds for dismissal first.

A. Equal Protection Clause

Under one theory the plaintiff alleges, in essence, what amounts to an equal protection claim. He complains that there is no rehabilitative program set up for sex offenders such as him whereas such programs are set up for drug and alcohol offenders.[1] The Equal Protection Clause does not require absolute equality. Ross v. Moffitt, 417 U.S. 600, 610, 94 S. Ct. 2437, 2444, 41 L.Ed.2d 341 (1974). Furthermore, "[t]o prove a cause of action under § 1983, the plaintiff must demonstrate that

[1]Apparently, the parole board takes into consideration whether the offender has participated in a rehabilitative program.

prison officials acted with a discriminatory purpose." Woods v. Edwards, 51 F.3d 577, 580 (5th Cir. 1995). Without alleging membership in a "suspect class" of persons or infringement of a "fundamental right," classifications may be set aside only if they are based solely on reasons totally unrelated to the pursuit of the state's goals and only if no grounds can be conceived to justify them. Clements v. Fashing, 457 U.S. 957, 962-63, 102 S. Ct. 2836, 2843, 73 L.Ed.2d 508 (1982). As noted infra, participation in rehabilitation programs is not a constitutional right. Furthermore, the plaintiff has not alleged that he is, nor is he, a member of a suspect class. McGinnis v. Royster, 410 U.S. 263, 268-70, 93 S. Ct. 1055, 1059, 35 L.Ed.2d 282 (1973).

Without such predicates, the plaintiff may not recover if the difference in rehabilitative program opportunities has "some rational basis rather than being wholly arbitrary and capricious." Green v. McKaskle, 788 F.2d 1116, 1125 (5th Cir. 1986). Furthermore, "prison policy can be based on such considerations as administrative convenience, expense or security." Id. The court agrees with the Magistrate Judge that "such a choice by prison administrators may be supported on many grounds, including that there are many more prisoners at the state penitentiary who suffer from drug and alcohol problems than there are sex offenders, thus justifying by number the expenditures required to operate such a program."

B. No Constitutional Right to Rehabilitation

The law is well settled that a prisoner has no constitutional right to participate in an educational or rehabilitative program. Moody v. Daggett, 429 U.S. 78, 88 n.9, 97 S. Ct. 274, 279 n.9, 50 L.Ed.2d 236 (1976); Bulger v. United States Bureau of Prisons, 65 F.3d 48, 49 (5th Cir. 1995) ("Prisoner classification and eligibility for rehabilitation programs . . . are not directly subject to 'due process' protections.") (citing Moody, supra); Beck v. Lynaugh, 842 F.2d 759, 762 (5th Cir. 1988) ("[A] state has no constitutional obligation to provide basic educational or vocational training to prisoners."); Stewart v. Winter, 669 F.2d 328, 336 n.19 (5th Cir. 1982) ("[F]ailure to provide a rehabilitation or recreation program does not, by itself, constitute cruel and unusual punishment.");

Lato v. Attorney General, 773 F. Supp. 973, 978 (W.D. Tex. 1991) ("The United States Constitution does not mandate educational, rehabilitative, or vocational programs."); see also McKinney v. Kuzirian, 972 F.2d 1340, 1992 WL 188100, **1 (9th Cir. Aug. 6, 1992) ("In general, a prisoner has no constitutional right to rehabilitation or education while in prison."); French v. Owens, 777 F.2d 1250, 1256 (7th Cir. 1985); Warmsley v. Hale, 1992 WL 310825, *3 (Tex. App., Oct. 29, 1992) ("The state has no Constitutional obligation to provide prisoners with such rehabilitation programs.") (citing Newman v. Alabama, 559 F.2d 283, 291 (5th Cir. 1977), rev'd in part, 438 U.S. 781 (1978)).

C. Mississippi State Law on Rehabilitation

The court notes again that the plaintiff only objected to the Magistrate Judge's Report and Recommendation on the ground that Mississippi law mandates implementation of sex offender rehabilitation programs. Since there is no inherent constitutional right to participate in a rehabilitation program, the court must look to whether the State of Mississippi has created a due process right or liberty interest in such a program. The Supreme Court of the United States had held that a state created such an interest when it used language "of an unmistakably mandatory character" instead of simple procedural guidelines. Hewitt v. Helms, 459 U.S. 460, 471, 103 S. Ct. 864, 871, 74 L.Ed.2d 675 (1983). Recently, however, the court reconsidered its analysis in Hewitt and observed that "the search for a negative implication from mandatory language in prisoner regulations has strayed from the real concerns undergirding the liberty protected by the Due Process Clause." Eason v. Thaler, 73 F.3d 1322, 1325 (5th Cir. 1996) (quoting Sandin v. Conner, --- U.S. ---, 115 S. Ct. 2293, 2300, 132 L.Ed.2d 418 (1995)). The Court stated that

> "[W]e recognize that States may under certain circumstances create liberty interests which are protected by the Due Process Clause. But these interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.

Eason, 73 F.3d at 1326 (quoting Sandin, 115 S. Ct. at 2300).

The court is of the opinion that Mississippi law has not created a liberty interest protected by the due process clause in participation in sex offender rehabilitation programs. The plaintiff directed

the court's attention to several statutes in his attempt to demonstrate the mandatory character of the directive to institute such programs. The one statute even closely relevant to the plaintiff's claim is Miss. Code Ann. § 47-5-10(d) which states that the Department of Corrections shall have the power and duty to "plan, develop and coordinate a statewide, comprehensive correctional program designed to train and **rehabilitate** offenders in order to prevent, control and retard recidivism." Miss. Code Ann. § 47-5-10(d) (emphasis added). The court is of the opinion that such language does not create a liberty interest in an offense-specific rehabilitation program. Many programs directed by the correctional department could be

considered rehabilitative. The plaintiff has participated in several himself. For instance, the plaintiff completed a welding vocational rehabilitation program, a machine shop vocational rehabilitation program, and he participated in and graduated from the Parchman college program. The fact that the institution where the plaintiff is presently housed does not have a sex offender rehabilitation program is indeed unfortunate, especially in light of the plaintiff's express desire to participate in such a program, but in no way does the lack of a sex offender rehabilitation program impinge upon a liberty interest of the plaintiff.

As such, the court is of the opinion that the Report and Recommendation issued by the Magistrate Judge on August 1, 1995, should be approved and adopted.

A separate order in accordance with this opinion shall issue this day.

THIS ___ day of May, 1996.

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United States District Judge

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ORDER ADOPTING REPORT AND RECOMMENDATION

Pursuant to a memorandum opinion entered this day, the court is of the opinion that the Report and Recommendation of Magistrate Judge S. Allen Alexander, dated August 1, 1995, should be approved and adopted as the opinion of the court.

Therefore, it is ORDERED, ADJUDGED and DECREED that:

1) the Report and Recommendation issued by Magistrate Judge S. Allen Alexander on August 1, 1995, be approved and adopted as the opinion of the court.

2) the objections of the plaintiff are hereby DENIED.

3) this case is DISMISSED.

SO ORDERED this ___ day of May, 1996.

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United States District Judge